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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,556	11/12/2003	J. Hannah Baldwin	04001-P0003A	6909
24126	7590	05/03/2006	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			DOAN, ROBYN KJEU	
986 BEDFORD STREET			ART UNIT	PAPER NUMBER
STAMFORD, CT 06905-5619			3732	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,556	Applicant(s) BALDWIN, J. HANNAH	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Amendment filed 2/02/06 has been entered and carefully considered. Claims 1, 7, 14 and 20 have been amended. Limitations of amended claims have not been found to be patentable over newly discovered prior art, therefore, claims 1-20 are rejected under the new ground rejections as set forth below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "said fabric" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 7, 10-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregg (U.S. Pat. # 3,351,073).

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With regard to claims 1, 7, 10, and 20, Gregg discloses a hair retaining device (figs. 1 and 4) comprising an annular, elasticized band (10, col. 2, lines 1-4; Applicant is noted that Gregg shows a rectangular band 10, however when closed by fastener 32, 30, it becomes an annular elasticized band) for adjusting (using fasteners, 30, 32) to heads of varying sizes and for encircling a wearer's head, the band contracting about the wearer's head and having an upper edge (at 12, 14) with a diameter, a hair retainer (22) gathered at and extending from the upper edge of the elasticized band (10) and terminating at a generally circular retaining lip circumscribing an opening (figs. 1 and 4); the lip also having a diameter. Gregg does not disclose the hair retainer having a frustoconical shape and the diameter of the upper edge being smaller than the lip's diameter. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the hair retainer having a frustoconical shape and the diameter of the upper edge being smaller than the lip's diameter, since such modifications would have involved a mere change in the shape and size of the known component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claims 2 and 11, Gregg also shows the hair retainer having a stiff material and being at least partially rigid (col. 3, lines 34-39).

Claims 3-6, 8-9 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregg in view of Tognan et al (U.S. Pat. # 3,197,787).

With regard to claims 3-6, 8-9 and 12-19, Gregg discloses a hair retaining device comprising all the claimed limitations in claims 1, 7 as discussed above except for a continuous twofold fabric having an interior and an exterior surfaces forming an annular inner edge and an annular outer edge, the elastic portion being disposed within a first portion of the interior surface and the stiffening material being disposed with a second portion of the interior surface of the twofold fabric, the material of the fabric being terry cloth and the material of the stiffening material being mesh. Gregg also does not disclose the elastic and the fabric covering being puckered to allow the elastic to expand. Tognan et al discloses a hair retainer (figs. 1 and 3) comprising a twofold fabric material (at 20, 21, fig. 3, col. 2, line 16) having an interior and an exterior surfaces forming an annular inner edge and an annular outer edge, a drawing tape (22) being disposed within the interior surface of the twofold fabric for protecting the drawing tape. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the technique of using the twofold fabric material as taught by Tognan et al to cover the elastic portion and the stiffening material of Gregg in order to provide a covering to protect the elastic and the stiffening materials. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the fabric being terry cloth and the material of the stiffening material being mesh, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. and it would also have been an obvious matter of design choice to construct the elastic portion and

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the fabric covering being puckered, since such a modification would involved a routine skill in the art.

Conclusion

Applicant's arguments with respect to claims 1, 7, 14 and 20 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan
Examiner
Art Unit 3732



John J. Wilson
Primary Examiner